



## **FACTUAL HISTORY**

On October 25, 1987 appellant, then a 31-year-old readjustment counseling specialist, filed an occupational disease claim for acute post-traumatic stress disorder and delayed depression related to his employment. OWCP accepted the claim for post-traumatic stress disorder and depression and later expanded it to include bruxism. Appellant stopped working February 13, 1987 and was placed on OWCP's periodic compensation rolls on February 14, 1987.

On February 14, 2007 Dr. Arthur C. Roberts, a Board-certified psychiatrist and OWCP referral physician, opined that while appellant had residuals of his accepted conditions he could work four hours a day in a low stress structured environment. In an April 17, 2007 report, he indicated that appellant would need psychotherapeutic support as he phases in with vocational rehabilitation.

In two separate reports dated May 2, 2007 appellant's attending physicians, Dr. Laurence C. Smith, Jr., a clinical psychologist, and Dr. Paul Mascovich, a Board-certified psychiatrist, opined that appellant was not capable of working in any capacity.

OWCP found a conflict in medical opinion between Dr. Roberts and Drs. Smith and Mascovich and referred appellant to Dr. Stephen Moe, a Board-certified psychiatrist, for an impartial evaluation. On February 4, 2008 Dr. Moe opined that appellant's current psychiatric condition did not result from residuals of the accepted conditions; rather his current symptoms and impairment were due to excessive adoption of the illness. He stated that, while the work-related events that culminated in the work injury were the precipitant of appellant's symptoms and disability, the underlying cause of appellant's current symptoms and disability was a personality disorder unrelated to his work. Dr. Moe further opined, apart from the reinforcement of the illness role which came from 20 years of treatment, appellant was able to work in the same capacity as when he first took his job as a readjustment counseling specialist. He opined that appellant should start part-time work and gradually progress to full-time work.

On February 27, 2008 OWCP proposed to terminate appellant's compensation benefits based on the opinion of Dr. Moe who found that the accepted conditions had resolved. In response, appellant submitted a March 16, 2008 report from Dr. Smith and a March 20, 2008 report from Dr. Mark R. Stephens, a Board-certified internist.

In a March 28, 2008 decision, OWCP terminated appellant's compensation benefits, effective that date, based on Dr. Moe's opinion. Appellant requested an oral hearing that was held telephonically on August 6, 2008. Following the hearing, he submitted an August 5, 2008 report from Dr. William J. van Doorninck, a licensed psychologist, who opined that appellant remained totally disabled by his post-traumatic stress disorder and explained why he disagreed with many of Dr. Moe's assessments.

On November 20, 2008 OWCP's hearing representative set aside OWCP's March 28, 2008 decision finding that Dr. Moe could not be accorded special weight as an impartial medical specialist because he was asked to resolve the issue of the degree of disability, not whether the injury-related condition had resolved. The hearing representative found that a medical conflict

now existed between the attending physicians and Dr. Moe, who was accorded the weight of a second opinion specialist. The case was remanded for referral to a new impartial medical specialist regarding whether the injury-related conditions had resolved.

OWCP referred appellant to Dr. Bert Furmansky, a Board-certified psychiatrist, for an impartial medical examination. In a January 26, 2009 report, Dr. Furmansky opined that the accepted post-traumatic stress disorder had resolved to the point that it no longer totally disabled appellant. He noted that there were no medically objective disabling symptoms and appellant's residual self-reported fear of veterans occurred about 23 years ago. Dr. Furmansky concluded that there have been multiple documented intervening causal factors since 1987 that have significantly interfered with appellant's ability to return to work as well as his personality disorder and anxiety disorder that adversely affect his social and occupational functioning. He opined that appellant could not return to his former position or work with veterans due to his underlying personality disorder. Dr. Furmansky recommended the continuation of psychotropic medications and psychotherapy to help him return to work and participate in an appropriate rehabilitation program.

On March 10, 2009 OWCP proposed to terminate all compensation benefits based on Dr. Furmansky's report. It noted that appellant's compensation benefits would not be restored as of March 29, 2008 because the medical evidence established there were no continuing work-related residuals or disability. No additional evidence or argument was received.

By decision dated April 15, 2009, OWCP finalized appellant's termination of benefits effective March 29, 2008. On April 21, 2009 appellant requested an oral hearing which was held telephonically on August 11, 2009.

In a June 19, 2009 report, Dr. Susannah Smith, a clinical psychologist, opined that appellant's medical record supported that appellant had post-traumatic stress disorder, depression and anxiety, even though Dr. Furmansky did not pick it up in five hours of interviewing. She disputed Dr. Furmansky's report and contended that he was "ignoring over 20 years and many physicians' direct observations of other behavior, including current treating psychotherapists' observations." In a June 29, 2009 report, Dr. Smith discussed appellant's symptoms and how they supported the post-traumatic stress disorder diagnosis.

In a November 30, 2009 decision, OWCP's hearing representative set aside OWCP's decision and remanded the case for clarification from Dr. Furmansky. She noted that, where Dr. Furmansky stated that appellant's post-traumatic stress disorder had resolved "to the point that he was no longer completely disabled," this implied that the condition had not completely resolved. The hearing representative also noted that Dr. Furmansky did not explain why appellant required medications and work restrictions if the injury-related conditions had ceased.

On December 2, 2009 OWCP requested clarification from Dr. Furmansky. In a January 15, 2010 report, Dr. Furmansky opined that appellant's post-traumatic stress disorder had completely resolved. He stated that post-traumatic stress disorder had not been a medically reasonable working diagnosis since about 1989. Dr. Furmansky explained that records from October 1987 to June 8, 1989 reflected appellant's emphasis on job "burnout" rather than specific incidents, a "systemic problem in the structure of the work," references to a "sense of

permanent entitlement” and appellant’s statements of October 27 and November 17, 1987 where he emphasized general job difficulties and was “unable to recall life-threatening situations.” He noted the statement of accepted facts and advised that appellant “repeatedly reported incidents that did not actually occur as if they had occurred and the diagnosis of post-traumatic stress disorder lingered and was passed on to some treaters/evaluators without their evaluating the accepted factual basis of the report.” Dr. Furmansky opined that appellant’s “preexisting severe characterological problems have caused his psychiatric disability and that he has manipulated the workers’ compensation system serving his sense of entitlement for secondary gain.” He stated that appellant’s continued requirement for medication was a preventative measure and within the American Psychiatric Association treatment guidelines to have an individual who has had more than two episodes of major depression to remain on antidepressant medication for life to prevent recurrences. Dr. Furmansky concluded that appellant’s medication for mood stabilization and depression prevention was probably not work related but, due to his characterological problems, genetics and the ensuing life stressors that broke the chain of causal events from any 1986 work events. He reported that the need for work restrictions was based on appellant’s self-reported avoidance behavior and self-reported fear due to his nonwork-related characterological problems. Dr. Furmansky advised that the restrictions were not residuals of his work injury but manifestations of nonwork-related personality traits. He opined that appellant had returned to his preinjury baseline.

By decision dated January 25, 2010, OWCP found that appellant’s entitlement to benefits remained terminated effective March 29, 2008. Special weight was accorded to Dr. Furmansky’s reports, which showed that the injury-related conditions had resolved.

Appellant requested an oral hearing which was held telephonically on May 4, 2010. He testified that he sought to make an appointment privately with Dr. Furmansky before OWCP’s referral, but the physician was too busy to accept him. Appellant contended that, when he saw Dr. Furmansky, upon OWCP’s referral, the physician provided inaccurate information. Dr. Susannah Smith testified that appellant had work-related post-traumatic stress disorder for the past 23 years and disagreed with Dr. Furmansky’s contrary opinion. She opined that he could not work around veterans because objective panic attacks would ensue. Dr. Smith stated that there were no nonwork-related factors influencing appellant’s emotional condition. She indicated that he did not describe things, even in his own interest, a common symptom of post-traumatic stress. Dr. Smith indicated that appellant had been accepted as a private patient of Dr. Furmansky’s and that they had a 30- to 40-minute comprehensive conversation about his particular situation. She further stated that Dr. Furmansky kept canceling his appointments with appellant until he was advised that Dr. Furmansky was taking a job in another location. After this, Dr. Furmansky was in “the opposite role of evaluating him.” Dr. Smith stated that appellant became confused at times and was confused when traumatized. She stated that OWCP’s evaluations were extremely traumatic for appellant and he did not function well cognitively when he was being evaluated. After Dr. Smith’s testimony, appellant indicated that he spoke with Dr. Furmansky over the telephone for about 40 minutes prior to being evaluated by him for OWCP. Appellant’s attorney argued that Dr. Furmansky’s report should not be used because of his prior contact with appellant. He additionally argued that Dr. Furmansky acknowledged the presence of post-traumatic stress disorder which prevented him from returning to his former work environment.

In an April 9, 2010 report, Dr. Smith opined that appellant continued to have severe chronic post-traumatic stress disorder related to his work experience. She noted his symptoms remained constant except for some possible decrease in nightmares and flashbacks. Dr. Smith advised, however, that this could not be presently evaluated as appellant had an active case of multiple sclerosis, which showed itself in the last year and which his doctors stated was closely related to stress since he lost his disability status. Diagnosis included: post-traumatic stress disorder, with anxiety and depression; obsessive compulsive traits, secondary to post-traumatic stress disorder; dependant personality traits, secondary to post-traumatic stress disorder and multiple physical problems including bruxism.

Appellant also submitted an undated prescription slip on which handwritten names of several physicians were listed with notations on whether the physicians took new patients. One of the physicians listed was Dr. Furmanky. The prescription slip did not come from Dr. Furmanky's office.

In a July 22, 2010 decision, OWCP's hearing representative affirmed the January 25, 2010 decision. Dr. Furmanky was accorded special weight as an impartial medical specialist. The hearing representative questioned the reliability of appellant's testimony about the telephone consultation with Dr. Furmanky and found that this did not occur as alleged.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>4</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>5</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee the Secretary shall appoint a third physician who shall make an examination.<sup>6</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be

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<sup>2</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>5</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>6</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

given special weight.<sup>7</sup> However, in a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>8</sup>

Physicians who may not be used as referees include those previously connected with the claim or the claimant or physicians in partnership with those already so connected.<sup>9</sup> A claimant who asks to participate in selecting the referee physician or who objects to the selected physician should be requested to provide his or her reason for doing so. The claims examiner is responsible for evaluating the explanation offered. If the reason is considered acceptable, the medical management assistant will prepare a list of three specialists, including a candidate from a minority group if indicated and ask the claimant to choose one. This is the extent of the intervention allowed by the claimant in the process of selection or examination. If the reason offered is not considered valid, a formal denial of the claimant's request, including appeal rights, may be issued if requested.<sup>10</sup>

### ANALYSIS

OWCP originally found that a conflict in medical opinion existed between appellant's attending physicians, Drs. Laurence Smith and Mascovich, and Dr. Roberts, OWCP's referral physician, and referred appellant to Dr. Moe, for an impartial medical evaluation. While it originally terminated appellant's compensation benefits based on Dr. Moe's report, OWCP's hearing representative determined that Dr. Moe could not be accorded the weight of an impartial medical specialist as he was not asked whether the injury-related condition had resolved. The hearing representative found that Dr. Moe's opinion created a conflict with that of appellant's attending physicians on whether the injury-related conditions had resolved. OWCP then referred appellant to Dr. Furmansky for an impartial medical evaluation.

On January 26, 2009 Dr. Furmansky opined that the accepted post-traumatic stress disorder had resolved to the point where it was no longer disabling. He also opined that appellant could not return to his former position or work with veterans due to his underlying personality disorder. Dr. Furmansky recommended continued treatment and medication. In a January 15, 2010 supplemental report, he opined that appellant's work-related post-traumatic stress disorder had completely resolved since about 1989 and attributed appellant's continuing symptoms to appellant's "preexisting severe characterological problems." Dr. Furmansky stated that continued medication was preventive in nature, consistent with established treatment guidelines and was due to appellant's other conditions and ensuing life stressors that had broken

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<sup>7</sup> V.G., 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>8</sup> *Margaret M. Gilmore*, 47 ECAB 718 (1996).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(3)(b) (May 2003), citing *Raymond E. Heathcock*, 32 ECAB 2004 (1981).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4.b(4) (May 2003).

the chain of causal events from the 1986 work incident. He advised that appellant's work restrictions were based on appellant's self-reported behavior and fear due to his nonwork-related problems.

The Board finds that Dr. Furmansky's report is deficient for several reasons. In his initial report, Dr. Furmansky opined that appellant's accepted post-traumatic stress disorder had resolved to the point where it was no longer disabling. This phrasing suggests that he felt that some degree of the accepted condition continued. This is significant since OWCP terminated all compensation benefits, not just wage-loss compensation. If appellant continues to have any residuals of his accepted condition that require treatment, regardless of whether he is disabled for work, he would be entitled to medical benefits.<sup>11</sup> In his supplemental report, Dr. Furmansky opined that appellant's work-related post-traumatic stress disorder had completely resolved since about 1989 and attributed appellant's continuing symptoms to appellant's "preexisting severe characterological problems." However, he did not provide a fully rationalized explanation<sup>12</sup> regarding why he apparently changed his opinion from the condition having resolved to the point where it was no longer disabling to the accepted post-traumatic stress disorder having fully resolved. Furthermore, while Dr. Furmansky addressed the accepted post-traumatic stress disorder, he failed to address whether the other accepted conditions of depression and bruxism had resolved without residual. Thus, his reports are insufficient to establish that all residuals of all accepted conditions have resolved.

The Board also finds that the record does not show that OWCP adequately considered appellant's assertion that he had telephone consultation with Dr. Furmansky prior to Dr. Furmansky's selection as an impartial medical specialist. The hearing representative found that appellant's testimony regarding this was not reliable but the record does not indicate that OWCP wrote to Dr. Furmansky to clarify if he had prior contact with appellant. Both appellant and Dr. Susannah Smith testified at the May 4, 2010 hearing that appellant talked about his situation with Dr. Furmansky by telephone for up to 40 minutes prior to Dr. Furmansky's selection as an impartial specialist.<sup>13</sup> The Board notes that, if appellant had prior contact with Dr. Furmansky before attending the impartial medical examination, his report could not be used as that of an impartial medical specialist.<sup>14</sup> Without further inquiry by OWCP to determine if Dr. Furmansky has prior contact with appellant, OWCP cannot rely on Dr. Furmansky as an impartial medical specialist.

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<sup>11</sup> See *supra* notes 4, 5.

<sup>12</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>13</sup> The hearing transcript does not indicate if Dr. Smith has independent knowledge of a prior contact with Dr. Furmansky or if she relied on appellant's account of such contact.

<sup>14</sup> See *D.L.*, Docket No. 09-1549 (issued February 23, 2010) (physicians who may not be used as referees include those previously connected with the claim or the claimant). See *supra* note 9.

**CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's compensation benefits on March 29, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated July 22, 2010 is reversed.

Issued: August 23, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board